

BOOK PAGE
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RECORDER OF DEEDS
CITY OF ST. LOUIS
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SHARON QUIGLEY-CARPENTER
RECORDER OF DEEDS

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Document Title: Environmental Covenant

Document Date: August 19, 2016

Grantor: 3960 Chouteau Corporation
 c/o SCWHRA, Inc., Registered Agent
 8909 Ladue Road
 St. Louis, Missouri 63124

Grantee: 3960 Chouteau Corporation
 c/o SCWHRA, Inc., Registered Agent
 8909 Ladue Road
 St. Louis, Missouri 63124

Departments: U.S. Environmental Protection Agency, Region 7
 c/o Superfund Division
 11201 Renner Boulevard
 Lenexa, Kansas 66219

 Missouri Department of Natural Resources
 P.O. Box 176
 1101 Riverside Drive
 Jefferson City, Missouri 65102

Legal Description: See legal description on attached Exhibit



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ENVIRONMENTAL COVENANT

This Environmental Covenant ("Covenant") is entered into by and between the Grantor, 3960 Chouteau Corporation, a Missouri corporation, who also is the "Owner" and "Holder," hereunder, and the U.S. Environmental Protection Agency ("EPA") and the Missouri Department of Natural Resources (MDNR), collectively, the "Departments," pursuant to the Missouri Environmental Covenants Act ("MoECA"), Sections 260.1000 through 260.1039, RSMo. Owner, Holder, and the Departments may collectively be referred to as the "Parties" herein.

RECITALS

WHEREAS, Owner is the owner in fee simple of certain real property commonly known and numbered as 3936-3964 Chouteau Avenue, St. Louis, Missouri 63110, legally described as:

See attached Exhibit

(the "Property");

WHEREAS, the Property is situated in St. Louis City County, Missouri;

WHEREAS, Owner desires to grant to the Holder this Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided for in MoECA;

WHEREAS, Each Department enters into this Covenant as a "department" as that term is defined in Section 260.1003(3) of MoECA, with all the attendant rights of a "department" under MoECA, which include, but are not limited to, having a right to enforce this Covenant;

WHEREAS, Holder enters into this Covenant as a "holder" as that term is defined in Section 260.1003(6) of MoECA, with all the attendant rights of a "holder" under MoECA, which include, but are not limited to, acquiring an interest in the Property and a right to enforce this Covenant;

WHEREAS, an environmental response project has been conducted at the Property at the request of EPA which included:

- the installation of a vapor mitigation system in a structure at the Property; and
- imposing certain activity and use limitations on the Property through this Covenant.

WHEREAS, upon completion of the environmental response project described above, contaminants of concern will remain on the Property at levels which do now allow for unlimited use of, and unrestricted exposures at, the Property; and



WHEREAS, although contaminants of concern will remain at the Property at levels above what the Departments consider to be acceptable for the unlimited use of, and unrestricted exposures at, the Property, the environmental response project is considered protective of human health and the environment as long as vapor mitigation in the structure continues, and the activity and use limitation imposed hereby are complied with

NOW THEREFORE, the Parties agree to the following:

1. Parties.

The Parties may each enforce this Covenant as provided in Section 260.1030 of MoECA.

2. Activity and Use Limitations.

Owner hereby subjects the Property to, and agrees to comply with, the following activity and use limitations:

- (a) **No Residential Land Use:** Based on records on file at EPA's Regional office the Property meets applicable standards for non-residential use. Therefore, contaminants of concern that may be remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the activity and use limitations imposed hereby remain in place. The Property shall **not** be used for residential purposes, which for purposes of this Covenant include, but are not limited to: single family homes, duplexes, multiplexes, apartments, condominiums, schools, child-care facilities, or any land use where persons can be expected to reside on the Property.
- (b) **No Disturbance of Soil:** Based on records on file at EPA's Regional office contaminants of concern in the soils at the Property exceed standards for non-residential use, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the Property so long as the soil is not disturbed such that exposure would result. Therefore, soil on the Property shall not be excavated or otherwise disturbed in any manner without the prior written approval of EPA. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall request permission to do so from the EPA at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, EPA may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur. Contaminated soil may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to EPA and Holder orally or in writing as soon as practicable, but no later than 48 hours after the disturbance. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or be properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report to the Departments describing such emergency and any response actions.



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- (c) **No Drilling or Use of Groundwater:** Based on records on file at EPA's Regional office, contaminants of concern remain in groundwater in one or more zones beneath the Property at levels exceeding standards for groundwater use. Therefore, in addition to any applicable state or local well use restrictions, the following restrictions shall apply to the Property:
- Groundwater from the Property shall not be consumed or otherwise used for any purpose, except for the collection of samples for environmental analysis, collection, treatment or disposal of groundwater for remedial purposes, or collection, treatment or disposal of groundwater as part of excavation or construction activities.
 - There shall be no drilling or other artificial penetration of any contaminated groundwater-bearing unit(s), unless performed in accordance with a Department-approved work plan;
 - Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with a Department-approved work plan.
- (d) **Maintenance of a Vapor Mitigation System:** Based on records on file at EPA's Regional office, contaminants of concern that may be remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the Owner/Transferee maintains a vapor mitigation system at the Property. Therefore, an Owner/Transferee shall maintain a vapor mitigation system at the Property and may not remove such vapor mitigation system without the prior written approval of EPA. If an Owner/Transferee desires to remove a vapor mitigation system at the Property, then such Owner/Transferee shall request permission to do so from the EPA at least 30 days before the removal of a vapor mitigation system is scheduled to begin. Based on the potential hazards associated with the removal of a vapor mitigation system, EPA may deny the request to remove a vapor mitigation system or may require specific protective or remedial actions before allowing such removal of a vapor mitigation system to occur. A vapor mitigation system may be removed if necessary in response to a malfunction or during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to EPA and Holder orally or in writing as soon as practicable, but no later than 48 hours after the removal. Within 30 days after such malfunction, or after such emergency has been abated, the Owner/Transferee shall provide a written report to the Departments describing such malfunction or emergency and any response actions.
- (e) If any person desires in the future to use the Property for any purpose or in any manner that is prohibited by this Covenant, the Departments and the Holder must be notified in advance so that a Modification, Temporary Deviation, or Termination



request can be considered as described below. Further analyses and/or response actions may be required prior to any such use.

3. Running with the Land.

This Covenant shall be binding upon Owner and Owner's heirs, successors, assigns, and other transferees in interest (collectively referred to as "Transferees") during their period of ownership, and shall run with the land, as provided in Section 260.1012 of MoECA, subject to amendment or termination as set forth herein. The term "Transferee(s)," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees (subject to applicable lender liability protections prescribed by law), easement holders, and/or lessees.

4. Location of Files and Records.

EPA maintains records pertaining to the Property at its Region 7 office, which is currently located at 11201 Renner Boulevard, Lenexa, Kansas. These records can be accessed through a request directed to EPA pursuant to the contact information contained in paragraph 16 below.

5. Enforcement.

Compliance with this Covenant may be enforced as provided in Section 260.1030 of MoECA. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority under any other applicable law.

In addition to or in lieu of any other remedy authorized by law, prior to taking legal action to enforce this Covenant, a Department may require Owner/Transferee to submit a plan to investigate and/or correct any alleged violation of this Covenant. If such Owner/Transferee fails to act within the required timeframe or if the Department finds a proposed remedy unacceptable, the Department may pursue any remedy authorized by law.

6. Right of Access.

Owner, on behalf of itself and any Transferees, hereby grants to the Holder and the Departments and their respectively authorized agents, contractors, and employees, the right to access the Property at all reasonable times for implementation, monitoring, inspection, or enforcement of this Covenant and the related environmental response project. Nothing herein shall be deemed to limit or otherwise impede a Department's right of access and entry under federal law, state law, or agreement.

7. Compliance Reporting.

Owner/Transferee during their period of ownership shall submit to the Departments, by no later than January 31st of each year, documentation verifying that the activity and use limitations imposed hereby were in place and complied with during the preceding



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calendar year that Owner/Transferee owned the Property. The Compliance Report shall include the following statement, signed by Owner/Transferee:

I certify that to the best of my knowledge, after thorough evaluation of appropriate facts and information, that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

In the event that an Owner, Transferee, or Holder becomes aware of any noncompliance with the activity and use limitations described in paragraph 2 above, such person or entity shall notify all other Parties to this Covenant in writing as soon as possible, but no later than 10 business days thereafter.

8. Notice upon Conveyance.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED _____, 2015,
RECORDED IN THE ST. LOUIS CITY COUNTY RECORDER OF
DEEDS, _____ ON, _____, 201__, AS DOCUMENT
_____, BOOK _____, PAGE _____.

Owner/Transferee shall notify Holder and the Department within ten (10) days following each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

9. Representations and Warranties.

Owner hereby represents and warrants to Holder and the Departments that:

- a) Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;
- b) this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected; and
- c) Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered.

**10. Amendments, Termination, and Temporary Deviations.**

This Covenant may be amended or terminated by approval of the Departments and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to Section 260.1027 of MoECA. Any other Parties to this Covenant hereby waive the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by the Departments in lieu of a permanent amendment to this Covenant. Owner/Transferee may submit a written request to the Departments to temporarily deviate from specified requirements described herein for a specific purpose and timeframe, which, unless extended by the Departments, shall not exceed ninety (90) days. Any such request shall be transmitted to the Holder and the Departments as described below. The request must specifically invoke this paragraph of this Covenant, fully explain the basis for such temporary deviation, and demonstrate that protection of human health and the environment will be maintained. The Departments will evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

11. Severability.

If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

12. Governing Law.

This Covenant shall be governed by and interpreted in accordance with the laws of the State of Missouri.

13. Recordation.

Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Owner shall record this Covenant with the appropriate recorder of deeds for the county in which the Property is situated. Owner shall be responsible for any costs associated with recording this Covenant.

14. Effective Date.

The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of the county in which the Property is situated.

15. Distribution of Covenant.

Within thirty (30) days following the recording of this Covenant, or any amendment or termination of this Covenant, Owner/Transferee shall, in accordance with Section 260.1018 of MoECA, distribute a file- and date-stamped copy of the Covenant as recorded with the appropriate recorder of deeds (including book and page numbers) to: (a) each of the Parties hereto; (b) each person holding a recorded interest in the Property,



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including any mortgagees or easement holders; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated by the Departments.

16. Contact Information.

Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Owner:

3960 Chouteau Corporation
c/o Gilbert Dolgin
12369 County Glen Lane
St. Louis, MO 63141

Joshua R. More
Schiff Hardin LLP
233 S. Wacker Drive
Chicago, IL 60606

If to Holder:

3960 Chouteau Corporation
c/o Gilbert Dolgin
12369 County Glen Lane
St. Louis, MO 63141

Joshua R. More
Schiff Hardin LLP
233 S. Wacker Drive
Chicago, IL 60606

If to Departments:

U.S. Environmental Protection Agency, Region 7
Superfund Division
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176



Owner/Transferee, Holder, or a Department may change the designated recipient of such notices by providing written notice of the same to each other. If a Department provides notice to a former Owner/Transferee, then such Owner/Transferee shall so notify both the Department and the current Owner/Transferee of the Property.

17. Reservation of Rights.

This Covenant is a necessary component of the environmental response project described above. Nothing in this Covenant shall be construed so as to relieve any Owner/Transferee from the obligation to comply with this Covenant during its period of ownership, or with any other source of law. This Covenant is not a permit, nor does it modify any permit, order, agreement, decree, or judgment issued under any federal, State, or local laws or regulations, and the Departments do not warrant or aver in any manner that an Owner/Transferee's compliance with any aspect of this Covenant will result in compliance with any such requirements. The Departments each reserve all legal and equitable remedies available to enforce the provisions of this Covenant or any other legal requirement, and/or to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Property. Nothing herein shall be construed so as to prevent ae Department or Holder from taking any independent actions as allowed by law.

The undersigned represent and certify that they are authorized to sign this Covenant on behalf of their respective Parties.



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IT IS SO AGREED:

FOR OWNER
3960 CHOUTEAU CORPORATION:

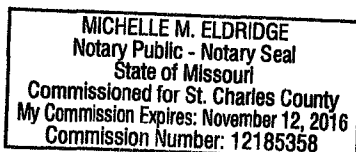
By: [Signature]
Name (print): Gilbert Dolgin
Title: V. President
Address: 12369 Country Glen Ln.

Date: July 5, 2016

STATE OF MO,
COUNTY OF St. Louis

On this 5th day of July, 2016, before me a Notary Public in and for said state, personally appeared Gilbert Dolgin (Name) VP (Title) of 3960 Chouteau Corporation, a Missouri corporation, known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

[Signature]
Notary Public



**FOR HOLDER
3960 CHOUTEAU COPORATION:**

By: [Signature]
Name (print): Gilbert Dolgin
Title: V. President
Address: 12369 Country Glen Ln.

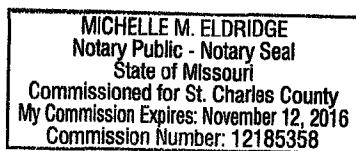
Date: July 5, 2016

STATE OF MO

COUNTY OF St. Louis

On this 5th day of July, 2016, before me a Notary Public in and for said state, personally appeared Gilbert Dolgin (Name)
VP (Title) of 3960 Chouteau Corporation, a Missouri corporation, known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

[Signature]
Notary Public



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**FOR DEPARTMENT
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

By: Mary P. Peterson
Mary P. Peterson, Director
Superfund Division

Date: 9/14/2016

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

On this 14th day of September, 2016, before me a Notary Public in and for said state, personally appeared Mary P. Peterson, Director of the Superfund Division of the U.S. Environmental Protection Agency, Region 7, or her designee, known to me to be the person who executed the within Covenant on behalf of the U.S. Environmental Protection Agency, Region 7, and acknowledged to me that she executed the same for the purposes therein stated.

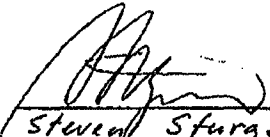


Sarah A. Moreno
Notary Public

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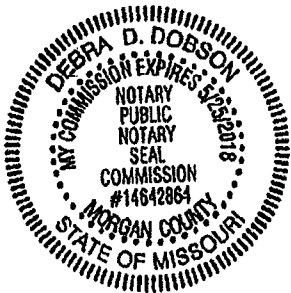
**FOR DEPARTMENT
MISSOURI DEPARTMENT OF NATURAL RESOURCES:**


By: 
Steven Sturgess

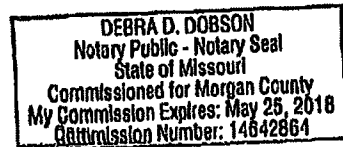
Date: August 19, 2016

STATE OF MISSOURI)
)
 COUNTY OF Morgan)

On this 19th day of August, 2016, before me a Notary Public in and for said state, personally appeared Steve Sturgess, the HWP Director of the Missouri Department of Natural Resources, or his/her designee, known to me to be the person who executed the within Covenant on behalf of the Missouri Department of Natural Resources, and acknowledged to me that he/she executed the same for the purposes therein stated.




 Notary Public





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EXHIBIT

LEGAL DESCRIPTION

A parcel of ground in US Survey 3307 of the Cul De Sac Common Fields and in Block 5821 of the City of St. Louis, Missouri, beginning at a point in the South line of Chouteau Avenue, distance 133 feet East of the East line of Vandeventer Avenue, formerly Old Manchester Road; thence running Southwardly at right angles to Chouteau Avenue 159 feet 9-3/4 inches to the South line of US Survey 3307; thence Eastwardly along the South line of said Survey; 357 feet 9 inches to the Intersection with the West line of the Right of Way of the Missouri Pacific Railway Company; thence Northwardly along the West line of Said Right of Way 185 feet 1-1/2 inches, to the South line of Chouteau Avenue (as formerly existing 80 feet wide); thence Westwardly along the South line of Said Chouteau Avenue 451 feet to place of beginning. Excepting therefrom the Northern 30 feet conveyed to the City of St. Louis by deed dated September 30, 1915 and recorded September 30, 1915, in Book 2883 page 112 and subsequently dedicated to public use as a portion of Chouteau Avenue by plat recorded in Plat Book 19, page 122; and also a strip of ground conveyed to B.F. Bush, as receiver of Missouri Pacific Railway Company, by deed dated November 5, 1915, and recorded December 31, 1915 in Book 2887 page 537.

Locator: 5821-00-00400
Address: 3938 Chouteau Avenue